IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No.386 of 2000.

Judgement reserved on: 12.11.2007

Date of decision: 27.11.2007.

Provident Fund Inspector **…….Appellant**

Vs.

Smt. Sudha Sood & Ors. **…. Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant : Mr. Rahul Mahajan, Advocate.

For the Respondents : Mr. Ashok Kumar Sud, Advocate, For respondents No.1 to 4 and 6.

Kuldip Singh, Judge.

This appeal has been directed against judgment dated 21.2.2000 passed by learned Judicial Magistrate Ist Class, Court No.(ii), Shimla in Cr. Case No.242/3 of 99/92, acquitting the respondents under Section 14A of the Employees Provident Fund and Misc. Provisions Act, 1952.

2. The brief facts of the complaint are that complainant is an Enforcement Officer of the Employees Provident Fund Organization, Ministry of Labour, Govt. of India, he is authorized to file the complaint. The respondents have failed to pay the Provident Fund contributions, administrative charges for the period December 1989 to February 1990 and they have contravened Section 6 of the

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

Employees Provident Fund and Misc. Provisions Act, 1952 (for short Act) read with paragraphs 29,30 and 38 of the scheme, framed under the Act, which is punishable under Section 14(I-A) read with section 14-A of the Act.

3. The respondents have failed to submit returns for the period December 1989 to February 1990 and have thus contravened paragraphs 38,36 of the Provident Fund Scheme and paragraph 15 of the Family Pension Fund Scheme punishable under paragraph 76(b) of the said scheme.

4. The respondents have failed to pay Family Pension Funds contributions for the period December 1989 to February 1990 and have thus contravened Section 6A of the Act which is punishable under Section 14(2-A) of the Act.

5. The respondents have failed to pay Employees Deposit Linked Insurance Funds contribution and administrative charges for the period December 1989 to February 1990 and have thus contravened Section 6C of the Act, which is punishable under Section 14(I-B) of the Act. It has been alleged that the respondent's prosecution has been sanctioned by the competent authority.

6. Notice of accusation was put to respondents, to which they pleaded not guilty and claimed trial. The complainant examined himself as CW-1 and closed the evidence. The respondents were examined under Section 313 Cr.P.C., they denied the prosecution case and examined four witnesses in defence. The learned trial Magistrate acquitted the respondents on 21.2.2000, hence this appeal.

7. I have heard Mr. Rahul Mahajan, learned counsel for the appellant and Mr. Ashok Kumar Sud, learned counsel for the respondents. It has been submitted on behalf of the appellant that learned trial Magistrate has erred in acquitting the respondents. The evidence on record has been misread, misinterpreted and misconstrued. The complainant has proved the case against the respondents beyond reasonable doubt and hence respondents are liable to be convicted and sentenced. The learned counsel for the respondents has supported the impugned judgment.

8. CW-1 Lachman Dass has stated that he is posted in the office of Enforcement since October 1990. He went to Hotel Samrat for checking hotel record. Hotel Samrat was assessed first time on 18.12.1990 and then on 29.1.1992. On 18.12.1990 the assessment was done by Mr. J.C. Behl. The second assessment on 29.1.1992 was done by him. The copies of assessment orders are Ex.CW-1/A and Ex.CW-1/B. The prosecution sanction to prosecute the respondents is Ex.CW-1/C along with forwarding letter Ex.PW-1/D. They did not deposit the amount after the assessment, an appeal was filed against the assessment, which was dismissed and thus assessment has attained finality. They did not deposit amount of assessment for the period December 1989 to February 1990. Thereafter the complaint was filed. In cross-examination he has stated that there is no document in the file which can show how many employees were engaged in hotel Samrat.

9. DW-1 Ram Lal, UDC, Income Tax Department has stated that there were total 19 employees in the hotel Samrat, as per

list of employees for the year 1990-91, to whom the salary has been paid, a copy of which is Ex.D-1.

10. DW-2 Kishori Lal Sharma, Civil Ahlmad, Court No.1, Shimla has stated that a suit titled as M/s Hotel Samrat vs. Regional Provident Fund is pending in the Court of learned Sub Judge Ist Class, Shimla.

11. DW-3 Ram Lal Chauhan, Labour Inspector has stated that hotel Samrat is a registered establishment since 1978 under Shop Act. As per register, on 1.1.1988 there were 11 employees. In 1995 there were 14 employees as per Ex.DW-3/A, Ex.DW-3/B is of 1996 and Ex.DW-3/C is of 1997 showing 12 employees. In Ex.DW-3/D in 1998 there were 13 employees. In 1993-94 as per register there were 14 employees and from 1988 to 1992 there were 11 employees. As per record there were never 20 or more employees.

12. DW-4 Manohar Lal has stated that he is a partner of hotel Samrat and is conversant with its management. Hotel Samrat had 12 to 19 employees and number of employees never exceeded 20. He has produced copies of extracts of register Ex.DW-4/A to Ex.DW-4/J, a copy of ledger also exhibited Ex.DW-4/J, copy of extract of cooliage from December 1988 to March 1989 Ex.DW-4/K and vouchers of cooliage Ex.DW-4/L to Ex.DW-4/P. Hotel Samrat partnership has been dissolved on 18.5.1998, copy of award to this effect is Ex.DW-4/Q.

13. Ex.CW-1/C is the sanction order to prosecute respondents. Section 14AC of the Act prescribes that no court shall take cognizance of any offence punishable under the Act, the

Pension Scheme, Insurance Scheme except on a report in writing of the facts constituting such offence made with the previous sanction of the Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government, by notification in the Official Gazette, in this behalf, by an Inspector appointed under section 13.

14. In para -1 of the complaint it has been alleged that the complainant is an Enforcement Officer of the Employees Provident Fund Organization, Ministry of Labour, Govt. of India and is authorized to file complaints in the Courts. The complaint under the Act can be filed by an Inspector appointed under Section 13 of the Act. There is no allegation in the complaint that the person who filed the complaint has been appointed as an Inspector under Section 13 of the Act nor notification to this effect has been placed on record to show that the person who filed the complaint is an Inspector appointed under Section 13 of the Act. Section 14AC bars the cognizance of any offence punishable under the Act and the scheme by the Court unless complaint is filed by competent officer after prosecution sanction. In ***Provident Fund Inspector vs. Harjit Singh, Secretary and another, [Vol.C 1991(2) PLR 652],*** it has been held that mere allegation in the complaint did not constitute legal evidence**,** it was obligatory for the prosecution to produce notification appointing complainant as Provident Fund Inspector and he was also to prove that he had been accorded sanction for launching the prosecution. In the absence of evidence to this effect, it could not be said that the complaint has been filed by a person

competent to launch the prosecution. In the present case the prosecution has placed sanction to prosecute the respondents but there is nothing on record to show that the complainant, who has filed the complaint was authorized to prosecute the respondents and he has been appointed as an Inspector under Section 13 of the Act, hence complaint is defective and its cognizance cannot be taken by the Court.

15. The prosecution has failed to place on record that Hotel Samrat establishment was having more than 20 employees at the relevant time. CW-1 Lachman Dass in his statement has not stated that hotel Samrat at the relevant time was having more than 20 employees and was covered under the Act and the scheme. On the contrary DW-1 Ram Lal from Income Tax Department has stated that there were not more than 19 employees in hotel Samrat in the year 1990-91. He has placed on record Ex.D-1 , showing the number of the employees of hotel Samrat. According to DW-3 Ram Lal Chauhan and DW-4 Manohar Lal the number of employees in hotel Samrat was never 20 or more. In the complaint also there is no allegation that there were 20 or more employees in hotel Samrat at the relevant time.

16. In assessment order Ex.CW-1/A names and number of employees engaged in hotel Samrat at the relevant time have not been mentioned. The orders Ex.CW-1/A and Ex.CW-1/B were passed in the absence of establishment. The complainant cannot take benefit of orders Ex.CW-1/A and Ex.CW-1/B when in complaint itself it has not been stated that the hotel Samrat establishment was

having 20 or more employees at the relevant time. The prosecution in the present case has failed to prove that hotel Samrat establishment had 20 or more employees at the relevant time. On the contrary, the respondents have placed on record sufficient material to show that hotel Samrat establishment never engaged 20 or more employees at the relevant time. The learned trial Magistrate on the basis of material on record has taken a possible view which requires no interference.

17. The result of the above discussion, the appeal fails and is dismissed accordingly.

(Kuldip Singh)
Judge.

November 27, 2007
(sks)